

TITLE 15. BOARD OF PRISON TERMS

NOTICE OF PROPOSED REGULATORY ACTION RN 02-03

SUBJECT: *ADMINISTRATIVE APPEALS*

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend sections 2051, 2052, and 2054 of Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY/REFERENCE

These regulations are submitted pursuant to the Board's authority under Penal Code section 5076.2 and are amended to implement, interpret, and/or make specific *In re Muszalski* (1975) 52 Cal.App.3d 500.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will close at 5:00 p.m., on December 27, 2002.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile No.: (916) 322-3475
E-mail: regcomment@bpt.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to CCR section 2050, any person under the board's jurisdiction may appeal any decision of the board which affects that person. The general grounds within which an appeal may be submitted include: 1) the decision was based on incorrect or incomplete information which, if correct or complete, might have resulted in a different decision; 2) an error of judgment led to a decision which was unreasonable in view of the facts; 3) the decision was illegal because the board did not have the legal authority to make the decision; or 4) the decision violated the board rules. The prisoner or parolee shall submit the appeal within 90 days of receipt of written confirmation of the decision. The Board Appeals Unit will make a decision to either: 1) order a new hearing; 2) deny the appeal; 3) make a new decision; or 4) dismiss the appeal.

The proposed modifications to the regulations will clearly establish the parolee or prisoner's procedural responsibilities when filing an appeal and specify to whom the appeal shall be submitted in accordance with CCR section 2052. This regulatory amendment will also specify time frames within which the board shall respond to these appeals and establish exceptions to the time frames in the event it is not feasible to answer the appeal within the specified time frame. In the event the appeal is not answered within the given time frame, the parolee or prisoner will be deemed to have exhausted their administrative remedies and may seek judicial review, pursuant to CCR section 2054(c).

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: *None*
- Cost or savings to any state agency: *\$286,045*
- *Additional funding to augment staffing to review and respond to administrative appeals has been requested through the Budget Change Proposal (BCP) process. The BCP proposes \$286,045 for the 2003-2004 fiscal year budget. The financial effect of these regulatory changes during the current fiscal year will be absorbed within the existing budget.*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendment to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

CONTACT PERSON

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
(916) 445-5277

In any such inquiries, please identify the action by using the **Board's regulation control number RN 02-03**.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Denise Schmidt, 324-7604**.

Questions on the substance of the proposed regulatory action may be directed to: **John Winn, Chief Counsel, 322-6729.**

Website Access: Materials regarding this proposal can be accessed from the Board's website at: www.bpt.ca.gov.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's Internet Home Page at (www.bpt.ca.gov).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person, by fax, or from the Board's website.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.